

## **Women Empowerment in Pakistan: A Comparative Critical Analysis of Domestic and International Legislations Governing Gender Justice for Inclusive Development**

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### **Abstract**

*This study contains an overview of the international as well as local perspectives of laws and policies for provision of work friendly environment to female working force who are trying to play a significant role in the development of society. Arguably, the core obstacles which a female encounter while striving for her career are i) purposeful exclusion/gender biasedness, ii) difficulty in maintaining work family balance, iii) workplace harassments, iv) neonatal & postnatal care/maternity and child care issues etc. No doubt, Pakistani women are taking part in the economic activities of the country and playing a vital role in the fields of economic growth as well as industrial, agricultural and social developments. However, arguably again the participation of female folk in the country's economy is very low. The study under consideration provides a comparative analysis of the best international practices/legislations adopted by the developed/ and developing countries for women empowerment in context with current legislations implemented in Pakistan for effective participation of female folk in the development of the country. The study discusses the reasons for low participation of female workers in the development process of the country, highlights the impact of weak legislation and suggests measures for improvement by addressing the neglected areas of implemented laws. The study contains suggestions to modify certain laws i.e. Maternity Benefit Ordinance, 1958, Factory's Act, 1934 and Protection against Harassment of Women at Workplace Act, 2010, according to the changing needs of a gender inclusive society through active participation of females in economic growth of the country.*

**Keywords:** Child Care, Women Empowerment, Gender Inclusion, Economic Growth, Harassment, Maternity Benefits

## 1. Introduction

In the beginning, I would like to quote a famous verse at the heart of women rights:

"وجود زن سے ہے تصویر کائنات میں رنگ"

{Meaning that the existence of women has added colors in the Universe}<sup>1</sup>

The role of a woman in the society is admittedly important, a woman's lap is the first place of learning for every individual, the nature has bestowed women with the responsibility to raise their children, to nourish the newborns and to look after a new member of society by building up a personality who have to play a positive role in the society and being an independent person. This responsibility is great in itself, however with the passage of time women have also proved that they have enough caliber to contribute in various fields of life, apart from their admitted roles of reproduction and nourishing a child, the female folk is rendering her best in every sphere of life. Her contribution towards development of society is undeniable, however, there are certain gender related barriers which adversely impact the active participation of women in social and economic development of society, these barriers include lack of gender friendly policies and typical conservative misogynist mindset which prevailed everywhere. These gender related barriers adversely affect women participation in the process of development of society which restrict almost half of the human population to share their progressive part in economic development of society. The policy makers are concerned for maximum gender participation in the world's economy, for which they are taking maximum measures to improve gender participation in the process of development.

In Islam the status of women is already determined by providing them rights in the inheritance and considering them an equal part of society, In His last sermon

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<sup>1</sup> Allama Iqbal, *Zarb-e-Kaleem* (first published 1936) *Aurat*103.

the Holy Prophet Muhammad (PBUH) bequeaths the mankind that “*Observe your duty to Allah in respect to the women, and treat them well*”<sup>2</sup>. The gender equality and women empowerment are vital for economic development in the modern society, which requires that the gender-based gaps need to be filled accordingly to provide maximum opportunities to the female folk in process of country’s development so they may play their roles effectively. In this regard, it is imperative to ensure equal participation and decent work with a work friendly environment for the women, where they can meaningfully participate in a broader perspective from decision making and financial management to handling household affairs. The inclusion of women in the process of economic development would surely have multidimensional impact which would not only provide the female members of society to get access toward resources and to increase productivity, but will also be helpful in controlling the menace of poverty and ignorance, which are the basic hurdles in the process of economic growth. While determining the factors causing restrictions in equal gender-based participation, through this study we will find out that the conservative approach of societies, less access to education, gender differences in laws, racial & territorial constraints, family responsibilities, biased, and unfavorable working conditions are the basic barriers which are affecting equal gender participation. The study mainly covers two aspects i.e. i) Maternity & Child Care Protection and ii) Workplace Harassment by discussing the prevailing regional as well as international legislations.

Women empowerment is the point of concern to the human rights watchdogs all over the globe, which is only possible with effective gender inclusion in the process of development, however, the ground realities reflects an adverse picture indeed. A survey conducted by the World Bank, in 2018 of 189 economies [titled as “Women, Business and the Law”] analyze the laws affecting the women’s decision to enter and remain in the job, the study revealed that “*the 104 economies still have laws which prevent women from working in specific jobs, almost 59 economies have no legal protection from sexual harassment at the workplace, and in 18 economies, husbands can legally prevent their wives from working*”. In addition, the Report further reflects that

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<sup>2</sup> Holy Prophet Muhammad (PBUH) The Farewell Sermon.

“over 2.7 billion women are legally restricted from having the same choice of jobs as men”.<sup>3</sup>

Globally, the developed nations have understood that without effective gender participation and women empowerment sustainable growth is not possible, therefore, the task of gender inclusion is incorporated in the “*World’s Sustainable Development Goal Agenda, 2030*”<sup>4</sup> to ensure gender equality. The UN’s SDGs 2030, contain 17 goals, set out for achieving the interlinked international goals particularly designed to attain the objective of sustainable, inclusive, prosperous and better future. The agenda 5 of SDGs 2030, specifically requires for “gender equality” which targets to end all forms of violence against women. The goal undertakes full and equal gender participation through equal opportunities of leadership and management in social, political, economic and public life. Likewise, there are certain other agenda of SDGs 2030 which related to gender participation in economic growth, these goals include **Agenda 1** ‘no poverty’ and **Agenda 8** ‘promote sustained, inclusive and sustainable economic growth’, accordingly these agendas are also indirectly related to equal gender inclusion, the fact confirms that in order to achieve the goals set out by SDGs 2030, the gender equality and inclusion of women is essential.

## 2. International Conventions for Provision of Work Friendly Environment

Internationally, there are various international conventions which obligate the states to legislate for implementation of women rights in order to adopt female friendly policies and to maintain gender equality through implementation of impartial and gender specific policies. In this regards the *Convention on the Political Rights of Women*, New York, on 31<sup>st</sup> March 1953<sup>5</sup>, was the first instrument which considered the political rights of women and resolved that every women is ‘*entitled to vote in all elections on equal terms of men*’, every

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<sup>3</sup> Un Women, ‘Facts and figures: economic empowerment’ <<https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>> accessed on 03 February, 2021

<sup>4</sup> Sustainable Development Goals 2030[2015] UN <<https://www.un.org/development/desa/disabilities/envision2030.html>> accessed on 27 January, 2021

<sup>5</sup> *Convention on the Political Rights of Women* (New York) 31 March 1953.

women is ‘*eligible to all publicly elected bodies*’, the Article III of the said convention also provides that “*Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men without any discrimination*”. Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> was adopted on 18<sup>th</sup> December 1979, the said convention is considered as International Bill of Rights for women, the instrument was first of its nature which particularly explained the gender-based discrimination and provided solutions to end such discrimination through adaptation of national policies. The preamble of the CEDAW reflects that the Convention was adopted for ‘*establishment of an international economic order based on equity and justice which will contribute significantly towards promotion of equality between men & women*’. The sub-clause 2 of Article 11 of CEDAW provides protection against gender-based discrimination the grounds of marriage or maternity and to ensure their effective right to work.

The above provisions of international conventions ensure equal workplace protection to women by protecting her right of reproduction and providing her a friendly environment where she can work with peace for a better and stable society. In order to create a work friendly working environment for female folk the International Labor Organization (ILO) has also played a positive unbiased role by ensuring the promotion of the concept of equality by devising fundamental principles. These principles are the fundamental component for the ILO’s Decent Work Agenda<sup>7</sup>, on basis of which various Conventions and Recommendation have been passed by ILO for equal working opportunities to maintain the work family life balance by both men and women. In order to promote the culture of gender equality and to discourage the discrimination at a work place the ILO has passed various conventions which includes the following:

- Convention No. 3: Maternity Protection 1919;
- Convention No. 103: Maternity Protection (Revised)1952;

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<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 18 December 1979 Art.11 c12

<sup>7</sup> ILO Decent Work Agenda <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed on 03<sup>rd</sup> November 2020

- Recommendation No. 95: Maternity Protection, 1952;
- Convention No. 183 and Recommendation No. 191: Maternity Protection, 2000;
- Recommendation No. 165: Workers with Family Responsibilities, 1981;
- Convention No. 100: Equal Remuneration Convention, 1951;
- Convention No. 111: Discrimination (Employment and Occupation) Convention, 1958;
- Convention No. 156 Workers with Family Responsibilities Convention, 1981;

These conventions, together with their corresponding recommendations progressively expanded the scope and entitlements of maternity protection at work and provide a detailed guideline for adopting relevant national policies and action plans. The core purpose of these conventions is to enable women to successfully combine their reproductive and productive roles and to prevent unequal treatment in employment due to their reproductive role. The ILO Convention No. 183<sup>8</sup> calls for measures to ensure health protection for pregnant or nursing woman, it assures job protection and non-discrimination. The Article 10 of said convention stipulates rules for providing breast feeding facility to the working mother by extending nursing breaks during working hours. The Recommendation to the Convention also endorsed 18 weeks maternity leaves, it also acknowledged, paternity leaves, child care facilities and protection for the mother and child etc. There are other conventions which emphasized upon flexible working hours and the facility to work from home too. The ILO defines five important measures for decent working by devising the Work Time Arrangements (WTAs) which include i) promoting health and safety; ii) advancing the productivity and sustainability of enterprises; iii) Family friendly and improving work life balance; iv) promoting gender equality; v) offering worker a degree of choice and influence over their hours of work<sup>9</sup>. International policy makers deeply emphasized upon devising policies for maintaining a work family balance through friendly workplace.

Similarly, the harassment at work is also hurdling the effective participation of women in the process of society's development, there are certain international

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<sup>8</sup> Maternity Protection Convention (2000) ILO C183.

<sup>9</sup> Guide to Developing Balanced Working Time Arrangements (2019) ILO 2.1.

conventions that urge the state parties to enact effective legislations to protect the working women from the workplace harassment, these conventions include the following:

- Council of Europe's Convention on preventing and combating violence against women and domestic violence (Art. 40);
- C190 - Violence and Harassment Convention, 2019 (No. 190) not yet enforced shall come into force by 25<sup>th</sup> June 2021;

The objective of the said Conventions is to promote an environment which does not tolerate violence and harassment at workplaces, it extensively describes the core principles which requires that the members states would adopt inclusive, integrated and gender friendly policies to protect working women from violence and harassment at work. In addition, the United Nations has also prescribed a 'UN System Model Policy on Sexual Harassment'<sup>10</sup> which was endorsed by the UN System Chief Executive Board in its second session in 2018, this model policy was designed to address the sexual harassment within the UN Organizations. The said policy though designed to implement within the UN's official working system, however, it is a comprehensive policy to tackle the issue of workplace harassment.

### 3. Constitutional Protections in Pakistan

The constitutional narrative as stimulated in the Constitution of Pakistan, 1973, particularly emphasized upon provision of friendly working environment to the workforce in Pakistan. The Constitution of Pakistan, 1973 explicitly provides protection to the employees, i.e. not to be discriminated on basis of sex. The Art. 27 of the Constitution of Pakistan, 1973<sup>11</sup> provides the safeguard against discrimination in service, likewise, the Principles of Policy as framed under the Constitution of Pakistan also ensure the participation of women in national life and such principles also provide protection to the family, mother and the child, the relevant articles are reproduced hereunder:

***Art. 34 Full participation of women in national life. – Steps shall be taken to ensure full participation of women in all spheres of national life.***

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<sup>10</sup> UN System Model Policy on Sexual Harassment (UN) 2018.

<sup>11</sup> The Constitution of Islamic Republic of Pakistan 1973, s 27, 34, 35,37.

**Art. 35 Protection of family, etc:-** The State shall protect the marriage, the family, the mother and the child.

On basis of aforesaid conventions and various other conventions the Government of Pakistan being member state of ILO has enacted some women friendly legislations which are explicitly enlisted herein below:

- The West Pakistan Maternity Benefits Ordinance, 1958 implemented in Punjab, Balochistan & Federal Capital Territory.
- The KP Maternity Benefit Act, 2013,
- The Sindh Maternity Benefit Act, 2018 (16 Week's Leaves) (Nursing Breaks) (Day Care Facilities).
- Certain provisions of Factories Act, 1934;
- Protection against Harassment of Women at Workplace Act, 2010.
- Prevention of Anti Women Practice Act, 2011.
- The Mines Maternity Benefits Act, 1941.

The study contains detailed discussion hereinafter on the two main subjects i.e. Maternity Benefits including child care and the Protection from Workplace Harassment.

#### **i. Maternity Benefits**

As already discussed that the right to maternity benefits is enshrined in several international human rights instruments and ILO conventions. The Art. 25(2) of Universal Declaration of Human Rights, provides that the "*motherhood and childhood are entitled to special care and assistance*", the said Declaration further states that Member States must ensure that everyone gets a "*just and favorable condition of work*" [Art.23 (1)]<sup>12</sup>. The Art 10(2) of International Covenant on Economic, Social and Cultural Rights 1966 provides that "*special protection to be accorded to mothers during a reasonable period before and after child birth, including paid leaves or leaves with adequate social security benefits*"<sup>13</sup>.

In compliance of these international recommendations on human rights the number of countries have legislated laws in accordance with ILO conventions to acknowledge the maternity rights of working women for provision of a

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<sup>12</sup> The Universal Declaration (10 December 1948) UN Art. 25(2) 23(1)

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights (1966) Art. 10(2)



gender friendly workplace. Apart from the developed countries like America, Canada and United Kingdom many developing countries like Cambodia, Malaysia, Thailand, Bangladesh, India, Pakistan, Philippines and Indonesia etc. have enacted the relevant laws to provide safeguard to working ladies by providing them a friendly workplace by understanding their dual role in the society for maintaining a work family balance through their effective participation towards a progressive economy and society.

**ii. Health during Maternity**

Factually, pregnancy, childbirth and the post-natal period are three phases in a woman's reproductive life in which special health risks exist and special workplace protection is required. Recognizing and addressing the hazard may greatly reduce the specific risks to her health which may enhance the probability of a successful outcome to the pregnancy and increase the chances for the healthy development of a child. The referred ILO Convention No. 183 calls for measures to ensure health protection for pregnant or nursing women, the Art. 3 of Convention 183 pertain to the health of a pregnant employee and nursing mother. During pregnancy and up to at least three months after confinement, women should not be employed on work prejudicial to their health or that of the child. The Recommendation No. 191 on maternity protection<sup>14</sup> states that on basis of relevant medical certificate measures should be taken to provide alternative work opportunities to a pregnant or nursing woman by segregating the harmful and hazardous work which may adversely affect the health of a pregnant or nursing woman or her child.

These Recommendations includes i) adaptation of the woman's conditions of work; ii) transfer to another post not harmful to her health without loss of pay when such an adaptation is not feasible; or iii) paid leave in accordance with national laws, iv) regulations or practice when such a transfer is not feasible; v) Special precautions or alternative employment rotation may be necessary in the case of pregnant women working in the presence of radiation.

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<sup>14</sup> Maternity Protection Recommendation ILO (2000) R191.

#### **4. National Legislative Frameworks in Other Jurisdictions**

##### **i) United States of America**

In United States of America, the Civil Rights Act of 1964 has amended the Pregnancy Discrimination Act, 1978, which provides that an employer could not single out pregnancy-related conditions for special procedures to determine an employee's ability to work<sup>15</sup>. If an employee is temporarily unable to perform her job because of her pregnancy, the employer must treat her in a similar manner as he treats any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments, or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled because of pregnancy to do the same. The Family and Medical Leave Act 1993, provides 12 weeks unpaid leaves for the care of new child and seriously ill family member, however, all the employees are not covered under such law<sup>16</sup>. The study reflects that in USA there is no particular statute to deal with the maternity benefits, only family and medical leaves legislations are dealing with the maternity related benefits.

##### **ii) United Kingdom**

In UK the **Social Security Contributions and Benefits Act, 1992** described the maternity benefits available to a working woman, the Clause 35 of Part II of such law pertains to contributory benefits which also discuss the maternity benefits, according to which the pregnant employees are entitled for the maternity allowances and paid leaves up to 52 weeks.<sup>17</sup> **The Employment Rights Act, 1996** define particular rights of employees which includes working hours, night work, maternity and paternity leave, etc. As per said law the expected mothers have right to get leave/off for antenatal appointments and have flexible working hours. The law protects the unfair dismissal on basis of leaves for family reasons and requires employers to offer suitable alternative work to the lady if her nature of working may adversely impact her pregnancy, however, for this purpose the employer is required to assess the health risk for

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<sup>15</sup> Pregnancy Discrimination Act, 1978 amended title VII Civil Rights Act 1964 (US).

<sup>16</sup> The Family and Medical Leave Act (1993) sec.102.

<sup>17</sup> Social Security Contributions and Benefits Act (1992) Cl 35 Part II.

the pregnant mothers and to take measures for reduction of risks which includes heavy lifting or carrying, long working hours, long hours standing and sitting etc. at her workplace. The laws also support single parents in terms of provision of leaves, tax reductions and allowances. The breastfeeding rights are not exclusively protected through statutes in UK, however, the employers in UK usually accommodate the request of mothers under health and safety laws<sup>18</sup>. The Equality Act, 2010 provide protection for the Women from maternity and pregnancy discrimination and acknowledges the pay for the woman worker during the period of Maternity leaves. The employment laws in UK are mostly based on gender equality, however, the legislative support is effectively available for working ladies to contribute towards development of society<sup>19</sup>.

### iii) **Bangladesh**

Chapter IV of Bangladesh Labour Act, 2006 deals with Maternity Benefits available to ladies working in all establishments and industry except certain categories as discussed in Section. 1(4) of Act, 2006 which includes government offices, security and printing press and Ordinance Factories, Charitable Establishments, Small Establishments/Family Businesses etc. The law provides for 16 weeks maternity leaves with full pay, the law also includes the prohibition with respect to assignment of arduous nature of work (Sec.45). In addition, the Section 94 of Bangladesh Labour Act, 2006 provides in detail the requirement for taking care of the children of employees retaining in any establishment, it elaborately provides the specification for the child care facility at the workplace which required to be adequately furnished and equipped with cot, cradle, bedding, toys and play ground. The section 109 of the Act, 2006 fix “*limitation of hours of work for women*” according to which ‘*no woman is allowed to work in an establishment between the hours of 10:00 p.m. and 6:00 a.m.*’ The review of Bangladesh’s Labour Act, 2006 reflects that it includes certain beneficial provisions for the working female folk of the country however, such law has

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<sup>18</sup> The Employment Rights Act 1996

<sup>19</sup> The Equality Act (2010) UK

limited scope as it excludes public offices and many other establishments for provision of child friendly facilities<sup>20</sup>.

**iv) Sri Lanka**

In Sri Lanka, the Maternity Benefit Ordinance 1939 (Amended as Act No. 43, 1985) provides for 12-week maternity leaves for her first two children and 6 weeks benefits in case she is the mother of two children and in case of delivery of a dead child (Section 3). The Section 10-B of the Ordinance also restricts the employer to employ women to work which may cause injury to her or her child. The law also provides that the employer of more than a prescribed number of women workers in any trade shall establish and maintain a creches for children under five years of age, the law also determines the criteria for maintenance of said creches (Section 12-A). Similarly, the said law also contains a provision with respect to nursing breaks for the female workers (Section 12 B). The Maternity Benefit law implemented in Srilanka is not applicable to all female employees, as it defines the woman worker other than the *woman employed in the business of a shop or an office*". On the other hand the Part IA of Shop and Office Employees (Regulation of Employment and Remuneration) Act, acknowledges the maternity benefits for the female workers in shops and businesses, which also allows 70 days leave for birth of alive child and 28 days leave if the pregnancy does not result in a living child birth. The study of maternity related legislations in Srilanka reflects that the laws are somehow gender friendly and covers various aspects of gender inclusion in the process of economic growth<sup>21</sup>.

**v) India**

In India the Maternity Benefit Act, 1961 was implemented, however, the said law was accordingly amended in 2017 through the Maternity Benefit (Amendment) Act, 2017, the currently implemented Maternity Benefit law provides 26 weeks maternity leaves to the working mother for her first two children, however, for more than two children the mother would be entitled for 12 weeks maternity leaves, it also acknowledges six week leaves for miscarriage and medical termination. The law also allows mothers to work from home with

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<sup>20</sup> Bangladesh Labour Act (2006) sec 1, 45, 91, 95

<sup>21</sup> Srilanka's Maternity Benefit Ordinance 1939 (Amended as Act No. 43) 1985 sec.3, 10(b), 12 (a)(b)

mutual understanding with employer. The amended law provides for establishment of creches in the organizations with 50 or more employees, where a mother worker would be entitled to visit her child four times a day. The recent amended legislation in India is more elaborate and supportive for the female working force<sup>22</sup>.

**vi) Philippines**

The Working women in Philippine are constitutionally protected and have access to safe and healthy working conditions, the Philippian State took responsibility for the welfare and wellbeing of working women by realizing their potential to serve the nation<sup>23</sup>. The country has legislated bundles of laws to protect the Gender Based Rights, the recently implemented Republic Act No. 11210 known as “105-Days Expanded Maternity Leave Law” acknowledges 105 days Maternity leave with a further extension of One month without pay leaves. The female workers are also entitled for 60 days leave in case of miscarriage or emergency termination of pregnancy, the law also acknowledges the 15 days further leave for single parents. According to law the female employees of Private as well as public sector are entitled for maternity benefits<sup>24</sup>. The Republic Act 10028 Expanded Breastfeeding Promotion Act, 2009 provides for establishing of lactation stations at workplaces and for provision of lactation breaks for nursing employees and such intervals shall not be less than a total of forty minutes during 8 working hours<sup>25</sup>. The laws for establishment of day care centers in the country are already in field, whereas, the Executive Order No. 340 exclusively promulgated with objective to ensure proper care to the children of employees of all national government agencies and government owned and controlled co-operations. There are legislations which allows night work to the female workers if intended to work during night time, these laws contain certain exceptions with respect to pregnant employees and mothers of small children. The set of various gender related legislations

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<sup>22</sup> India’s Maternity Benefit Act (1961) (Amendment) Act (2017)

<sup>23</sup> The Constitution of Philippines (1987) Sec 14 Article XII

<sup>24</sup> 05-Days Expanded Maternity Leave Law Act No 11210 (2018)

<sup>25</sup> Expanded Breastfeeding Promotion Act (2009) Republic Act 10028 (Philippine)

provides a comprehensive support to working women in Philippine to allow them to participate freely in country's development.

**vii) Singapore**

In Singapore the **Child Development Co-Savings Act, 2011 and the Employment Act (revised on 2009)** provides for Maternity Protection and benefits, which includes adoption leave, childcare leave, extended childcare leave, unpaid infant care leave, shared parental leave and paternity leave, according to the provisions of law, the female employees in Singapore are entitled for Sixteen-week maternity leaves on completion of service of three months in an establishment, but there is no particular law to allow for nursing breaks to the working mother during work.

**viii) Pakistan**

In Pakistan the relevant implemented law which provides the Maternity Protection and acknowledges the maternity benefits to the women workers is West Pakistan Maternity Benefit Ordinance, 1958. Such law stipulates that upon the completion of four months employment or qualifying period, a worker may have up to six weeks prenatal and postnatal leave during which she is paid a salary drawn on the basis of her last pay. The Ordinance is applicable to all industrial and commercial establishments where women staff is employed. It also places restrictions on the dismissal of the woman during her maternity leave. However, the said law is silent when it comes to taking appropriate measures to maintain the health of a pregnant lady, such as leaves due to complication during pregnancy, leaves for miscarriage and other medical conditions due to pregnancy, the law also doesn't not sufficiently provide nursing breaks as well as child care facilities at workplace.

The Law & Justice Commission of Pakistan through its Report No. 128 had suggested legislative reforms in the Maternity Benefit Ordinance, 1958 to include the restriction to assign hazardous nature work to the expected mother which may adversely affect the health of mother and unborn child in compliance of International obligation of Pakistan towards above referred ILO Conventions, as in various other jurisdictions of the world the said health

protection is already available in the law<sup>26</sup>. Consequently, the Maternity Benefit law implemented in Punjab got amended through **Punjab Maternity Benefits (Amendment) Act, 2016 (X of 2016)** and the **KP Maternity Benefit Act, 2013**, is amended vide KP Act No. VIII of 2015, by insertion of recommended provision in section 3 of KP Maternity Benefit Act, 2013. However, the recently enacted **Sindh Maternity Benefit Act, 2018 ( Sindh Act, 2018)** does not contain such provision, though the new Sindh Legislation contains certain unique provisions which as compared to other implemented laws in the country are more women friendly as the said law not only expand the period of maternity leaves to **16 weeks** but also includes certain provisions to facilitate the working mother at her workplace which also includes **nursing breaks** and the **child care facility** at workplace. The Section 3 of Sindh Act, 2018 provides 16 weeks mandatory Maternity Leave, whereas, the section 4 of the Sindh Act, 2018 provides for additional Maternity Leaves which prescribe one week leave for miscarriage, 4 weeks paid leaves for still born child and 4 weeks paid leaves for other medical complications. The law is applicable for all the female employees who have worked for a continuous period of one year. The Section 9 of the Sindh Act, 2018 stipulate 4 nursing breaks for the working mother to feed her newborn during working hours. The Sindh Act, 2018 is a better piece of legislation for provision of women friendly working environment to the female working class though the same also contain certain legislative flaws as the language of Section 11 of Sindh Maternity Benefit Act, 2018 is not complete and creates anomaly with respect to prescribed punishment in said law (the further research on topic is in process by author). Recently, a Maternity & Paternity Leave Bill 2018 for all private and public establishments under the control of federal government, has been moved and passed by the upper house of Pakistan (Senate) on 27<sup>th</sup> January, 2020 which suggested 180 days for first birth, 120 days for second birth and 90 days for third birth as maternity leave, and 30 days Paternity Leaves for all employees, the implementation of said law is still in process<sup>27</sup>, however, the review of draft law reflects that referred law only relates to maternity and paternity leave, it does not pertains to any other

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<sup>26</sup> *Amendment to Section 3 of the west Pakistan Maternity Benefit Ordinance 1958 (Law com 128, 2009).*

<sup>27</sup> Maternity & Paternity Leave Bill 2018

privileges, perks and benefits as provided in Sindh Act, 2018 (Author's Observation).

## **5. Child Care Facilities in Pakistan**

In Pakistan, the Factories Act 1934 is implemented to the extent of manufacturing units and factories, though the law only covers the factory work force, however, the same Act contains various provisions with respect to working women and children and set standards for health and safety of the workers in factories, the law prescribes maximum working hours, overtime, rest intervals and night work etc. The law contains special provision imposing restriction on the employment of women. The section 33 (Q) of Factories Act, 1934 discussed the power of provincial government for provision of shelter for rest, it also provides for arranging a room for Children, however, the Section is not effective as it requires that the room will be designated in the establishment where 50 female workers are rendering services, the requirement of 50 female for provision of room for child care is not feasible, as the factory owners can intentionally avoid to appoint fifty females to deprive them from the facility<sup>28</sup>. Likewise, the corresponding provision of Indian Factories Act, 1948 i.e. Sec. 48, also provides for establishing 'Creches' in every factory wherein more than 30 women are working<sup>29</sup>. Since the Factories Act, 1934, only deals with the factory workers thus the same has limited scope for other establishments.

## **6. Impact of Harassment on Women Participation in Economic Development**

Harassment at workplace is a social stigma which has drastically affected the gender participation in the economic development. The women being a weaker section of male dominated society are most vulnerable to such practice. The United Nation defines harassment as a kind of behavior that hinders work and promote offensive work environment. There are various forms of Harassments at workplace, the most important one is Sexual Harassment which includes physical, verbal & non-verbal harassments, the causes for harassment includes lack of awareness of status of women in society, misuse of authority, hostile working environment, retaliation, jealousies, male dominant approach and lack of organizational policies, whatsoever is the factor, the harassment is a root

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<sup>28</sup> Factories Act 1934 (Pakistan)

<sup>29</sup> Factories Act 1948 (India) sec 48



cause for gender exclusion and adversely impacting the women participation in the process of progression. The meager punishment in law is also an element which is hurdling the fair implementation of law, the victim avoids to complain about the incident as it may impact her fragile dignity and because the punishment to the accused is insufficient. The non-availability of organizational policy and non-implementation of code of conduct provided for the organization with respect to Harassment at work place is also an obstacle in implementation of law in true spirit, the most of the organizations intentionally or unintentionally have failed to implement the law. Due to the sensitivity of the subject, occasionally, the victim avoids to public her complaint of Harassment, out of the fear of disgrace and subsequent expected shame in case if she does complain her male family members may force her to revert her complaint and to give up the profession. The most common reason of non-implementation of the law in various jurisdiction is the attitude of the authorities, generally the management, by using its dominant position exploits the victim by compelling her to withdraw the complaint, many private/public sector organizations in order to maintain their goodwill used coercive as well as incentive measures to convince them for withdrawal of their complaint; weak prosecution and inquiry is also an element which is effecting the proper implementation of the law.

## **7. National Status of Legislations on Workplace Harassment in Other Jurisdictions**

In order to review the laws already applicable in international jurisdiction a brief comparative analysis of harassment laws implemented in certain other jurisdictions is given herein below:

### **i) United Kingdom**

The UK's Equality Act, 2010 defines Harassment as "*i) violating someone's dignity; ii) creating an intimidating, hostile, degrading, humiliating or offensive environment*". The law also discussed 'Victimization'. The law provides protection to the employees from Harassment and Victimization. This harassment at work is not gender specific, however, it also protects the harassment on basis of sex, age, race, gender reassignment,

pregnancy/maternity, religion and belief etc. The law protects the employees particularly the females from gender related harassment and behavioral issues which not only handle the sexual advances but also included the purposeful exclusion, unfair treatments, ridiculing and insulting by words or behavior etc.<sup>30</sup> The UK's Protection from Harassment Act, 1997 deals with the general act of Harassment. The said act criminalizes the offence of 'harassment' with the penal punishment for six months, simultaneously with the civil remedy of damages caused due to anxiety and financial loss causing due to harassment. The Section 8 of the UK's Protection from Harassment Act, 1997, provides for issuance of "**Non-harassment order**" to protect the person from further harassment<sup>31</sup>.

**ii) India**

In India "the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013" (Indian act, 2013) is implemented to deal with the Sexual Harassment at Workplace, the law has been designed on basis of the "**Vishaka Guidelines**" prescribed by the Supreme Court of India in Vishaka & others Vs State of Rajasthan Case [(1997) 6 SCC 241, AIR 1997 SC 3011], the said law contains the definition of Harassment as settled by the Supreme Court of India . The law included the domestic workers, contract workers, trainees, probationers and apprentices etc. and a wide number of workplaces which covered the inorganized sector, entertainment and other services providers etc. (ref. Section 2(O)). The Chapters II & III of the Indian Act, 2013 pertains to the constitution of Internal Complaint Committees and Local Complaint Committees at a district level. The Section 14 of the Indian Act, 2013 provides punishment for false and malicious complaint and false evidence, the law allows for payment of monetary compensation to the aggrieved women vide Section 15 of the Act by calculating the loss in career opportunity, mental trauma, pain, suffering, emotional distress and other financial loss caused due to the act of Harassment. The Act prescribed the duties

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<sup>30</sup> UK's Equality Act 2010

<sup>31</sup> UK's Protection from Harassment Act 1997

of the Employer for fair implementation of the law and suggest penalty in shape of fine for non-compliance of the provision of law. The Indian Law, 2013, contain certain very effective provisions which includes the damages for the victim, dealing with false claims and the proceedings against employers if they fail to implement the law, however, the law gives much power to the Internal as well as local committees as sole authority for redressal of the complaint, which is questionable in terms of fairness and impartiality as the Employer due to certain vested interests can jeopardies the harassment proceeding by pressurizing the members of Internal Committees, therefore, for effective implementation of this law impartiality of the law and the external monitoring mechanism needs to be ensure accordingly<sup>32</sup>.

**iii) Malaysia**

The **Part XVA of Malaysian Employment Act, 1955 (Act No. 265)** deals with Sexual Harassment at workplace, the Sections 81A to 81G deals with the workplace harassment, it provides an internal inquiry process to be conducted on receipt of the complaint for Harassment. The law provides that in case if the allegations of harassment are proved, the employer can initiate disciplinary proceedings against the accused which may include dismissal from service, downgrading and other lesser punishments deems just and fair. The law also provides that in case of proven harassment the employee has right to terminate the employment contract. Moreover, the Malaysian law also consider that the failure of Employer in compliance of law is an offence and its section 81F provide penalty of fine for employer who fails to implement the law as per its letter & spirit. The Malaysian law on Harassment is not very much comprehensive, it provides an internal mechanism for redressal of complaint, which somehow compromised the impartiality and unbiasedness on behalf of organization, however the provision for imposing fine for non-compliance with the law is useful<sup>33</sup>.

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<sup>32</sup> Indian Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>33</sup> Malaysian Employment Act 1955 (Act 265)

iv) **Status of Workplace Harassment Law in Pakistan**

In past the harassment at workplace was common but there was no legal cover to protect the working ladies in Pakistan, however, in compliance of its International Obligation for protection of Women at Workplace and in order to encourage the female folk to participate in the economic growth of Pakistan, the Government have enacted the law for “**Protection against Harassment of Women at Workplace Act, 2010**” the core purpose of such law is to provide protection against harassment at workplace and to provide redressal to the complaints of female employees with respect to harassment at workplace. Such law is in field since 2010.<sup>34</sup> If we review the general perspective, we will find that in Pakistan harassment at workplace is badly affecting the gender inclusion in the process of economic growth, social and ethical development of the country, admittedly, the cultural norms of our society are mostly male dominant and the female working in subordination are very much vulnerable and easy prey for victimization, the harassment culture at workplace is compelling our female workforce to remain confined in the boundary wall of their homes to be secure from mental as well as physical abuse. A Study published in the Business & Economic Review with title “**Sexual Harassment at workplace and its Impact on Employees Turnover Intentions**” highlighted the impact of workplace harassment on employee’s turnover intentions, the study concluded in following manner:

*“The results of the study explicitly show that sexual harassment does lead to employee turnover intentions. Despite the fact that Pakistani population is reluctant to reveal their sexual harassment experiences, results proved that sexual harassment increases employees’ turnover ratio. Consequently, the employer has to bear enormous costs of turnover which are the major contributor to the total cost of sexual harassment”<sup>35</sup>.*

At present, the ombudsperson for protection against harassment of women at workplace is actively working & adjudicating the complaints of harassment, however, due to lack of trust and reluctance of victim in registering the

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<sup>34</sup> Protection against Harassment of Women at Workplace Act 2010 Pakistan

<sup>35</sup> Maheen Salman & other, ‘*Sexual Harassment at workplace and its Impact on Employees Turnover Intentions*’, (2016), Vol. 8, Business & Economic Review 87

complaint and the arbitrary attitude of the Organizations, it not possible to bring all the cases of Workplace Harassment into limelight, therefore, it is high time to evolve an effective mechanism by improving the efficiency of existing law. The Current legislation prescribed an internal as well as external mechanism to deal with the complaint of harassment. The law also prescribes major and minor penalties for Harassment, however, in many instances it has been highlighted that the scope of the law is limited as it does not cover all of the field where females are at vulnerable position to be harassed for example the existing law does not cover the domestic servants, students and Media persons as discussed in the case titled as *Meera Shafi Vs Office of the Governor Punjab* ref. [2020], PLD 54 Lahore. In referred case the Lahore High Court, discussed that the self-employed and independent contractor does not fall within the scope of workplace harassment<sup>36</sup>. Respectively, the bare perusal of the law reflects that the same does not empower the Ombudsperson to initiate proceedings/inquiry on self-motion (Suo motu) by taking notice of certain incidents. The issue of filing of frivolous complaints by female employees has also been noticed in various cases, which leads towards disparity and humiliation for an innocent person who has wrongly accuses for the allegation of harassment this aspect also requires attention as the harassment law currently implemented in Pakistan. The existing law also not contain any provision to monitor effective implementation of the law within organization as the organization try to suppress the complaints, the law impose penalty and requires to start proceeding against employer for non-implementation of law through District Court, which seems a cumbersome process for an already destitute victim. Recently, the Hon'ble Supreme Court of Pakistan while discussing the shortcomings of the "Protection against Harassment of Women at Workplace Act, 2010" has pointed out:

*"Harassment in any society or organization is a testament to regressive behavior that creates an intimidating, hostile, degrading, humiliating, and offensive environment which has a devastating effect on any society or organization by adversely affecting its overall performance and development.*

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<sup>36</sup> *Meera Shafi Vs Office of the Governor Punjab* [2020] PLD 54(Lah).

*The Act, 2010, rather than addressing issue of harassment in all its manifestation, as noted above, in a holistic manner, is a myopic piece of legislation that focused only on a minute fraction of harassment. To our great regret, all such acts of harassment that fall beyond the pale of restricted definition of actionable harassment under section 2(h) *ibid*; can neither be made cognizable or punishable by the Inquiry Committee and/or the Ombudsman, in view of the fetters placed under Article 12 of the Constitution of Pakistan, 1973. The act, demeanor, behavior, and/or conduct that has been made cognizable is of limited application and, has been nailed down in the definition clause of section 2 (h) of the Act, 2010 and not as generically reflected either from Preamble or the title of the Act, 2010”<sup>37</sup>.*

The observation of Hon’ble Supreme Court of Pakistan as well as the comparative study of the subject reflects that the Workplace Harassment law implemented in Pakistan need certain reforms to improve the productivity of the said law.

## **8. Research Findings & Conclusion**

In light of above discussed comparative analysis of applicable laws of other jurisdictions with the implemented legislation in Pakistan, the imperative conclusion needs to be drawn that in order to provide a work friendly environment to the female workers in Pakistan the implemented gender related legislations require to be revamped in accordance with the international requirements. Resultantly, it is suggested that the loopholes in our legislative framework which are hindering almost 40% of country’s population to participate in process of economic development is need to be addressed in fair manner for better gender inclusion in the process of economic growth of country, therefore, it is concluded that the laws implemented in Pakistan needs to be modified accordingly for provision of better working opportunities to female working force for inclusive development of society, in this regards, the author recommends and suggest below referred steps for considering

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<sup>37</sup> CP No.4570 OF 2019 (Against the judgment dated 11.10. 2019 passed by Islamabad High Court, Islamabad in W.P. No. 2948 of 2018).

appropriate amendments in the existing legislations particularly in maternity benefit and child care laws as well as in workplace harassment laws.

**i) Enhanced Maternity Benefits**

The above discussed comparative analysis reflects that the UN Conventions recommends excessive period for maternity leaves as well as leaves for maternity related complication and medical conditions, whereas, the currently implemented Maternity Benefit Laws in Pakistan (except Sindh Province) provide 12 weeks paid leaves which are also not available for all the female workers. It is pertinent to point out that the recent **Sindh Maternity Benefit Act, 2018** provides 16 weeks leaves and also acknowledge other maternity related leaves. In addition, said law cover all the female employees without any classification, therefore, it is suggested that the other provinces of Pakistan may also follow the suit to adopt the Sindh legislation with certain modification in lines with International laws.

**ii) Improved Facilities for Child Care**

The improved child care facilities at workplace can play an effective role in increased gender participation in process of development, therefore, positive arrangements require to be made for provision of friendly workplace to the women in Pakistan. If we consider the UN Conventions and the implemented laws of other countries, we would find that various Jurisdictions after realizing the dual role of a woman have implemented the laws for provision of mandatory child care facilities at workplace.

Accordingly, the nursing breaks are need to be provided to working mothers. The jurisdictions i.e. India, Sri Lanka, Bangladesh etc., even the Sindh legislation also contain provision for the nursing breaks. Thus, in order to improve the effectiveness of current laws for provision of more friendly working environment to women, it is imperative that the increased incentives in terms of child care facilities, nursing breaks, flexible working hours and work from home facilities, must be included in the current legislations as well as to be implemented in *stricto sensu*. The Indian law acknowledges the work from home facility to working mothers which has already been proven effective during the prevailing circumstances of the Covid-19 Pandemic, therefore, in

order to create a gender inclusive workplace, it is important that the implemented legislations to be modified accordingly.

iii) **Protection from Harassment**

Moreover, the menace of workplace harassment to undermine the self-esteem and to discourage the gender participation need to be controlled through effective implementation and modification of current law to protect the dignity of women while serving toward the economic stability of the country. In this regard it is recommended that the scope of harassment law implemented in Pakistan may be expanded by inclusion of certain useful provisions already implemented in other jurisdictions. As discussed by the Supreme Court of Pakistan in Case titled as *Nadia Naz V the President of Islamic Republic of Pakistan* [CP No. 4570/2019] the definition of word ‘Harassment’ as given in the Protection against Harassment of Women at the Workplace Act, 2010, needs to be reviewed in terms of the preamble of said law and in comparison, to respective laws implemented in other jurisdictions. Likewise, the enhanced penalty for the organization for not implementing the law in letter and spirit would increase the effectiveness of law as well as fair inspection and monitoring of organization to review the implementation status within organization would prove effective. Whereas, controlling the false and frivolous complaints would curb the misuse of this legislation. Likewise, expanding the scope of Cyber Crime laws in respect of stalking etc. would cover the harassment through modern means. Further the provision of passing of non-harassment orders or providing interim reliefs as already available in UK, would also decrease the agony of victim who suffers the financial as well as the social loss due to harassment.



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